IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WA.No. 2144 of 2003(E)

AGAINST THE JUDGEMENT IN WPC.34532/2003 DATED 4.11.2003
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APPELLANT: PETITIONER IN WP(C)

BHARATH SANCHAR NIGAM LIMITED,
INDUS AVENUE, KALLAI ROAD, KOZHIKODE,
REP. BY ITS EXECUTIVE ENGINEER,
ELECTRICAL DIVISION, SANJAY GUPTA.

BY ADV. SRI.K.SRIKUMAR

RESPONDENTS: RESPONDENTS IN WP(C)
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1. THE STATE OF KERALA, REPRESENTED
BY ITS CHIEF SECRETARY.

2. THE INTELLIGENCE OFFICER (IB - 1)
COMMERCIAL TAXES, KOZHIKODE.

3. THE APPELLATE ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES, KOZHIKODE.

4. THE TAHSILDAR (RR) KOZHIKODE.

5. M/S.PURISONS ENGINEERS PVT. LTD.,
NO.12, JORBHAGH MARKET,
NEW DELHI - 110 003.

R1 TO R4 BY SPL.GOVERNMENT PLEADER (TAXES) MR.V.V.ASHOKAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.2144 of 2003

Dated, this the 4th day of June, 2007

JUDGMENT

H.L.Dattu, C.J.

This appeal arises out of an order passed by the learned Single Judge in W.P.(C) No.34532 of 2003 dated 4th November, 2003. By the impugned order the learned Single Judge has rejected the writ petition and had directed the petitioner to prefer an appeal against the order passed levying penalty under the provisions of the Kerala Tax on Entry of Goods into Local Areas Act, 1994, (for short the Act).

2. The virus of Section 3 of the Act which is the charging provision had been called in question by some of the dealers registered under the provisions of the said Act. A Division Bench of this Court in the case of **Thressiamma L. Chirayil** v. **State of Kerala** (2007 (1) KLT 303, while disposing of the matter had set aside the orders of assessment and the levy of penalty on the ground that the said levy is illegal and unauthorised and violative of Article 301 of the Constitution.

3. In view of the law declared by a Division Bench of this Court, in our view, the writ appeal filed by a dealer registered under the provisions of the Act requires to be allowed and the orders passed by the learned Single Judge in W.P.(C), No. 34532 of 2003 requires to be set aside. Accordingly, the following:

Order

i) The writ appeal is allowed.

ii) The orders passed by the learned Single Judge in W.P.(C)

No.34532 of 2003 dated 4th November, 2003 is set aside.

iii) The orders passed by the assessing authority levying penalty under the provisions of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 is set aside as illegal, unauthorised and violative of Article 301 of the Constitution.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns